

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

SWINTER GROUP, INC.,

Plaintiff,

v.

WEX, INC. d/b/a WEX FLEET ONE, and
JOHN DOES 1-10,

Defendants.

Civil Action No.

State Court No. 1611-CC00730

JURY TRIAL DEMANDED

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant WEX, Inc. d/b/a WEX Fleet One (“WEX”) hereby removes this action which has been pending as Cause No. 1611-CC00730 in the Circuit Court of St. Charles County, Missouri to the United States District Court for the Eastern District of Missouri, Eastern Division pursuant to 28 U.S.C. §§ 1331, 1441 & 1446. In support of removal, WEX respectfully shows the Court as follows:

STATEMENT OF THE STATE COURT ACTION

1. On August 11, 2016, Plaintiff Swinter Group, Inc. filed an action against WEX and John Does 1-10 in the Circuit Court of St. Charles County, Missouri, Case No. 1611-CC00730 (the “State Court Action”).

2. On August 18, 2016, WEX received copies of the Summons and Petition in the mail as attachments to a Notice of Acknowledgement for Service by Mail Plaintiff served pursuant to Missouri Supreme Court Rule 54.16.

3. The Complaint alleges that WEX violated the federal Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”). *E.g.*, Petition ¶ 27. Specifically, Plaintiff alleges

that WEX violated the TCPA by sending unsolicited facsimile advertisements that lacked TCPA-compliant opt-out notices. *See generally id.*

GROUND FOR REMOVAL – FEDERAL QUESTION

4. “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States,” 28 U.S.C. § 1331, and such cases are explicitly within this Court’s removal jurisdiction. 28 U.S.C. § 1441(a). Such federal question jurisdiction exists where the complaint alleges a purported violation of federal law as an essential element of a cause of action and could have been filed in federal court in the first instance. “Removal based on federal question jurisdiction is governed by the well pleaded complaint rule: jurisdiction is established only if a federal question is presented on the face of the plaintiff’s properly pleaded complaint.” *Pet Quarters, Inc. v. Depository Trust & Clearing Corp.*, 559 F.3d 772, 779 (8th Cir. 2009).

5. Plaintiff’s only claim is that WEX violated the TCPA, a federal statute; that Plaintiff is pursuing a purely federal claim is apparent from the face of the Petition. *E.g.*, Petition ¶ 22.

6. Federal district courts have original jurisdiction over TCPA claims. *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012). As such, this Court has jurisdiction pursuant to 28 U.S.C. § 1331 and the State Court Action is removable under 28 U.S.C. § 1441.

VENUE

7. Venue is proper in this district under 28 U.S.C. § 1441(a) because it embraces the county where the State Court Action was filed.

TIMELINESS OF REMOVAL

8. WEX files this Notice of Removal within 30 days of service of the Petition and Summons. Removal is thus timely pursuant to 28 U.S.C. § 1446(b).

ATTACHMENT OF ALL STATE COURT PLEADINGS

9. WEX has complied with 28 U.S.C. § 1446(a) by attaching all process, pleadings, and orders on file in the State Court Action collectively hereto as **Exhibit A**.

NOTICE OF REMOVAL TO THE STATE COURT

10. Promptly after filing this Notice of Removal, WEX will give written notice of removal to Plaintiff, through its attorney of record in the State Court Action, as well as to the Clerk of Court in the State Court Action, as required by 28 U.S.C. § 1446(d).

11. Pursuant to Local Rule 3-2.02, Defendant is contemporaneously filing a completed Civil Cover Sheet attached hereto as **Exhibit B**, an Original Filing Form attached hereto as **Exhibit C**, and a Disclosure of Organizational Interests Certificate as a separate filing.

WHEREFORE, WEX hereby removes the State Court Action filed by Plaintiff in the Missouri Circuit Court of St. Charles County to the United States District Court for the Eastern District of Missouri, Eastern Division.

September 15, 2016

Respectfully submitted,

CARMODY MACDONALD P.C.

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Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2016, I served a copy of the foregoing NOTICE OF REMOVAL on Plaintiff by depositing a copy in the U.S. Mail, postage prepaid, addressed as follows:

Ronald J. Eisenberg
SCHULTZ & ASSOCIATES LLP
640 Cepi Drive, Suite A
Chesterfield, MO 63005

/s/ David P. Stoeberl
David P. Stoeberl